

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

Illinois Bell Telephone Company	:	
	:	
Proposed implementation of High	:	Docket No. 00-0393
Frequency Portion of Loop	:	
(HFPL)/Line Sharing Service.	:	
(Tariffs filed April 21, 2000)	:	

**INITIAL SUPPLEMENTAL BRIEF ON REOPENING OF THE
STAFF OF THE ILLINOIS COMMERCE COMMISSION**

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April 7, 2004

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The Staff of the Illinois Commerce Commission (the "Staff"), by and through its counsel, and pursuant to the Administrative Law Judges ("ALJ") direction, respectfully submits its Supplemental Brief on Reopening in the above-captioned matter.

As discussed at a status hearing held on March 22, 2004, and set forth in a Notice of Continuance of Hearing and Notice Of Administrative Law Judge's Ruling, issued on March 29, 2004, the ALJ requested the parties to address two issues: (1) whether the D.C. Circuit Court of Appeals opinion, in *USTA v. FCC*, affects the review of the Triennial Review Order's ("TRO") impact on the Reopening of HFPL/Line Sharing Order in this docket; and (2) whether a party's requested relief requires any further action beyond the issuance of an order, including a detailed explanation by each party of the relief it seeks.

I. The *USTA v. FCC* Opinion has No Impact on the Reopening of HFPL/Line Sharing Proceeding

The *Triennial Review Order* relieves ILECs of the obligation to offer unbundled access to the HFPL, hybrid loops, and packet switching equipment and functions provided to residential and small business customers (Triennial Review Order, ¶¶255-263, 272, 288; *see also* 47 C.F.R. §51.319(a)(1)(i) and (a)(2)(i)), each of which is a component of the end-to-end HFPL UNE the Commission directed SBCI to offer (*Docket 00-0393*, Order on Rehearing, at 36-37; Order on Second Rehearing, at 72-73).

As Staff acknowledged in its Initial Brief,

the Commission ordered unbundling of the end-to-end HFPL UNE under the authority of the FCC's *Line Sharing Order*, as well as under discretionary authority granted by Section 13-505.6 of the Public Utilities Act. Accordingly, this aspect of the Commission's orders in this

proceeding appear to fall squarely within the scope of those decisions that the FCC expects that state Commission's will reconsider[, and that] the Triennial Review Order does not affect the Commission's findings that SBCI recover \$0 for loop qualification and recurring OSS modifications, and the rates for loop conditioning approved by the Commission."

Staff IB at 1-2.

The *USTA* opinion upheld the TRO's findings, and the FCC's rules, regarding hybrid loops, FTTH, and line sharing. United States Telecommunication Assoc. v. F.C.C., 359 F.3d 554, 2004 U.S. App. LEXIS 3960 at *80-81 (D.C. Cir. 2004). Therefore, it appears to Staff that the *USTA* opinion has no impact on the evaluation of the TRO Order on this case.

II. Staff Requested Relief

This docket was reopened "to determine whether the Commission's unbundling decisions in this case are in conflict with federal law, and, if so, to determine the appropriate unbundling provisions to be established consistent with Illinois and federal law." Order on Reopening at 5-6. As Staff stated in its initial and reply briefs, it appears that certain unbundling requirements in the *Line Sharing Orders*¹ are in conflict with federal law. Staff IB at 18-21. The CLECs, and to a lesser extent SBC, do not wholly share Staff's positions or views. Therefore, to give effect to Staff's requested relief, the Commission needs to determine whether the unbundling requirements are in conflict with federal law, and if so, identify those provisions that are in conflict and not in conflict. This can be done based on the arguments set forth in the briefs filed by the parties. And the question of whether, and to what extent, Section 13-801 requires SBC to offer

¹ Docket 00-0393, Final Order (March 14, 2001), Order on Rehearing (Sept. 26, 2001), Order on Second Rehearing (March 28, 2002), jointly referred to as "Line Sharing Orders".

unbundled access to Project Pronto, is not properly at issue in the instant docket, and the Commission not need resolve that question here and now. See Staff IB, at 24-30 (explaining Staff position on application of Section 13-801).

To summarize Staff's position, there are sections of the *Line Sharing Orders* that conflict with the TRO, and need to be amended, and sections that do not conflict with the TRO, and can remain intact. Accordingly, the Order should amend the *Line Sharing Orders* such that: (i) SBCI is not required to offer HFPL portion of copper subloops (Staff IB at 18-19); (ii) SBCI is not required to provide unbundled access to "packet switched, functions, features and capabilities", which includes the ILEC-owned ADLU line cards (Staff IB at 19, and 20-21); (iii) SBCI is not required to offer the \$0 rate for HFPL, since it is no longer applicable (but it does comply with the TELRIC cost methodology), and (iv) viewed as a single product offering, the end-to-end HFPL UNE (to the extent that it is a line sharing requirement) need no longer be offered as a UNE (subject to the transition rules set forth in the Triennial Review Order) as a matter of federal law.

The Order should not amend the *Line Sharing Orders* findings with respect to: (i) loop conditioning, since the FCC required "incumbent LECs to condition the local loop for the provision of xDSL-capable services" (Staff IB at 22; *citing* Triennial Review Order, at ¶ 642); (ii) the \$0 cost of providing manual loop qualification, since the TRO made no change to this provision (Staff IB at 23); (iii) the \$0 cost of providing OSS modifications, since the *Triennial Review Order* offers no reason to disturb that finding (Staff IB at 24); (iv) or any other matter not specifically addressed herein.

WHEREFORE, the Staff of the Illinois Commerce Commission respectfully requests that its recommendations be adopted in their entirety consistent with the arguments set forth herein.

Respectfully Submitted,

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